



**NATIONAL CONFERENCE
of STATE LEGISLATURES**

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**STATEMENT OF
THE HONORABLE MARTIN R. STEPHENS
SPEAKER OF THE HOUSE FOR THE STATE OF UTAH
CO-CHAIR, NCSL SPECIAL TASK FORCE ON ELECTION REFORM
AND
THE HONORABLE JOHN A. HURSON
MAJORITY LEADER, MARYLAND HOUSE OF DELEGATES,
CHAIR, NCSL ASSEMBLY ON FEDERAL ISSUES
BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION
UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING
NCSL SPECIAL TASK FORCE ON ELECTION REFORM

ON BEHALF OF THE
NATIONAL CONFERENCE OF STATE LEGISLATURES
APRIL 25, 2001**

Good morning. We are pleased to be here this morning to provide a much-needed and often overlooked perspective on election issues -- that of state legislators. We would first like to thank Chairman Ney and Ranking Member Hoyer for inviting us to participate in this very important hearing. Speaker Stephens currently sits as a co-chair of the National Conference of State Legislatures bipartisan Special Task Force on Elections Reform (NCSL Task Force). Delegate Hurson is the Majority Leader for the Maryland House of Delegates and serves as the Chair of NCSL's Assembly on Federal Issues.

The NCSL Elections Task Force was convened in response to the need for state legislators to come together and share information about our efforts to identify and correct any problems with election administration in the states. The Task Force is charged with the dual purposes of determining our position as to the appropriate federal role in state election processes and to serve as an expert body, providing information to the states on creative and innovative solutions to election issues. Some of the specific tasks which are being undertaken by the NCSL Elections Task Force are:

- Assisting states in ensuring the integrity of the ballot;
- Identifying and recommending best practices on election laws;

- Studying the effect of recent trends in voting, such as early voting and mail-in ballots; and
- Providing technical assistance to states in implementing election reforms.

We have heard from a variety of experts on the different options available to states that are seeking to improve their voting systems and practices and have outlined a series of policy statements on federal legislation to assist states in this effort. We plan to present a report on our findings for NCSL's Annual Meeting, which will be held in San Antonio in August.

Our testimony this morning will focus on both areas of our Task Force's work so that this panel may know both our position regarding federal involvement in state and local elections and the activities on election reform currently in progress in the states.

Congress and the Federal Government Should Work Cooperatively

With States On Election Reform Issues

State legislatures believe that election activities are a state responsibility. NCSL recognizes the constitutional authority granted to Congress to regulate certain aspects of elections. Article I, Section 4 permits Congress to regulate the

time, place, and manner of federal congressional elections. Article II, Section 1 permits Congress to regulate matters pertaining to the "Time" for the choosing of Presidential Electors. This grant of authority, however, is discretionary and has historically only been utilized in the area of civil rights. Two such examples of the exercise of this congressional authority can be found in the Voting Rights Act of 1965 and the National Voter Registration Act, more commonly known as the Motor Voter law. Because our system of elections is receiving a heightened level of scrutiny, the question we are all confronted with at every level of government is not whether Congress has the constitutional authority to regulate election issues, but rather **should** Congress act to so regulate.

Congress' power to regulate state and local election procedures is more limited. Congress has the power to regulate the states in the areas of equal protection, and to prevent discrimination in voting access pursuant to the 19th, 24th, and 26th Amendments. Congress has also enacted several other statutes that address the needs of disabled and elderly Americans as well as Americans serving our country abroad in the military and in our embassies. However, it is important to remember that most areas of election conduct are purely state and locally regulated. For example, poll closings, ballot design, and recount procedures are all matters that have historically been regulated by state law and local regulation. State

legislatures carefully consider the pros and cons of the implementation of these processes. We do not believe Congress should move hastily to enact any broad-sweeping election reform legislation without fully considering its fiscal and substantive impact on the states.

NCSL has adopted an emergency policy on election reform, which is attached to this testimony. This policy statement calls for Congress to refrain from enacting legislation that would limit the ability of state legislatures to exercise discretion over their election processes. The NCSL Elections Task Force has fleshed out this policy in greater detail, and has formulated thoughtful and meaningful principles on what the federal role in the elections process ought to be. The draft principles are also attached to this testimony. We would like to highlight their features for the panel this morning.

First and foremost, it is generally recognized that any federally enacted proposal that changes election procedures will necessarily impact the states; therefore distinctions in currently pending federal legislation that seek only to regulate "federal" elections are artificial. States and localities will not use different voting procedures and technology for an election in which a federal official is on the ballot versus a purely state or local election. This practice would not only be

absurd, but cost prohibitive. It is a common practice to hold multiple elections on the same day for all levels of government, not to mention the ballot initiatives and other purely state or local matters that make their way onto a state ballot on election day. Therefore, any federal initiative regulating "federal" elections will undoubtedly have an effect on all elections -- federal, state, and local. It is for this reason that representatives from all levels of government must be included in any congressional discussions to reform our election processes.

Many of the bills currently pending in both the United States House of Representatives and in the United States Senate call for the formation of some type of expert elections task force, commission, or advisory board. These proposals also call for any such commission or task force to develop recommendations or mandates for federal elections, which will also impact state and local elections. NCSL is wary of a congressionally appointed commission given the ineffectiveness and inequitable representation of state and local policymakers on a recent commission - the Federal Advisory Commission on Electronic Commerce created by the Internet Tax Freedom Act.

As this panel may recall, that Commission was established ostensibly for the purpose of providing an equal voice to states and localities on electronic commerce

issues. However, the end result of this effort was the inability of this Commission to reach consensus as called for by its authorizing statute and its ultimate failure to submit a report to Congress on which the Congress could act. Based upon the unsatisfactory composition and track record of the Federal Advisory Commission on Electronic Commerce, the NCSL Elections Task Force believes that state legislators must be included in the national debate surrounding election reform in a more meaningful way. The NCSL Elections Task Force asks Congress to include NCSL as a named member on the membership of any such task force, commission, or advisory board. It is only through this designated representation that state legislators can be sure that their voice is heard and considered.

Another major component of pending federal legislation is that of federal grants or other funding for the implementation of a federal task force or commission's findings. Some of the bills also attach stringent "one size fits all" mandates on the states that must be met for a state to receive any federal funding. Some legislation imposes mandates on states that must be met by a certain date regardless of whether a state applies for federal funds. It evidences a lack of respect at the federal level for the states' ability to solve problems at the state level, infringes on state sovereignty, and would preempt many existing state laws.

This approach also ignores the level of diversity that exists in the states on matters pertaining to election reforms. It also ignores the fact that what might work for one state may not be feasible in another. Perhaps the best illustration of this point is the state of Oregon, which used a mail-in ballot in the last presidential election. This process worked very well in Oregon. It may not, however work well in Ohio or Maryland. The Georgia legislature recently enacted legislation creating uniform intrastate procedures for election administration. This approach was developed by Georgia's Secretary of State after months of research as to the problems specific to Georgia's election processes. To presume that solutions suitable to Georgia would be suitable to elections held in California or Pennsylvania is not appropriate.

It is for these reasons that the NCSL Elections Task Force opposes federal funding to the states that is tied to specific mandates. In the alternative, the NCSL Elections Task Force recommends that any federal funding to the states be in the form of a block grant to states and based on broad principles, not upon specific mandates that would lead to a "one size fits all" approach to elections. For example, it is entirely appropriate for Congress to provide federal funding to states for the broad purpose of improving election technology generally, or for facilitating voter registration, verification, and maintenance of voter rolls. It is

entirely inappropriate for Congress to specify which type of voting technology must be used by the states, or the specific methodology states must use to facilitate voter registration. Diversity is one of the cornerstones of our democratic process. We ask Congress to continue to respect the diverse state practices that exist today in the area of election administration, in the hope that we can work together to remediate any flaws that exist.

State Election Reform Activities

The closeness of the recent presidential election, the Supreme Court's ruling in Bush v. Gore, and the subsequent spotlight on existing flaws in the nation's complex and multi-jurisdictional system of election administration served as a clarion call that was heard by state lawmakers across the nation. State legislators have asked whether the media spotlight that shined on Florida last fall might as well have illuminated flaws in the election procedures of our own states. Currently, there have been more than 1,500 bills introduced in state legislatures across the country to reform various aspects of election administration. Over 100 state bills have passed and been enacted into law. These state bills include proposals that range from reform of absentee voting procedures, ballot design, voter registration and purging of voter lists, recount procedures and standards for counting votes to poll worker training, voter education, restrictions on exit polling and media

predictions, procedures for appointing electors, and the establishment of funding, standards or procedures for updating voting technology. Some state legislatures have introduced broader reform measures than others. Some states have looked at election procedures and have determined only minor modifications to them are necessary.

As elected representatives of the people in our own states, we firmly believe that elections are the very essence of our representative democracy. State lawmakers are very concerned about the integrity of the voting process and are working to restore public faith in the mechanisms of our democracy. In some cases, where there is already a clear standard for counting ballots or a low error rate using existing technology, state lawmakers have concluded that only minor modifications to their election laws are necessary. In other states, the results of this scrutiny have led lawmakers to pull up their sleeves and get to work.

Some critics have recently suggested that states are dragging their feet on enacting the necessary reforms, that we are waiting for federal money to address the problem. Nothing could be further from the truth. Once again, more than 1500 bills have been introduced and debated in state legislatures; more than 100 have passed and been enacted into law. Most of the enacted bills to date have resulted

from action in those state legislatures that have concluded their legislative session for 2001. Dozens of additional bills are likely to pass and be enacted into law in the states that are still in session. In addition, states including Nebraska, Pennsylvania and Washington have appointed special commissions to identify the need for reform in their state during the interim and plan to address any recommendations during the next legislative session. Legislatures in 20 other states are considering bills to establish such a commission.

A few weeks ago, the Georgia legislature made funds available to purchase uniform voting equipment for every county in time for the primary election in 2004. South Dakota adopted a centralized voter registration system, along with a comprehensive, interagency plan to share information that will assist in purging deceased and other ineligible voters from the rolls. The Maryland legislature has passed legislation to establish a uniform statewide voting system and to improve various aspects of statewide election administration.

Idaho and New Mexico have joined the 32 states that previously adopted the voting systems performance standards of the Federal Election Commission; New Mexico has adopted a plan for early voting and another bill restoring the right to vote to convicted felons who have completed their sentence; North Dakota has

passed a plan to require written voting instructions along with absentee ballots; several states have increased or changed their formula for election worker pay; several states have passed bills that clarify criteria for invalidating a military ballot. Others have passed resolutions expressing support for the electoral college.

In addition, states are considering options to appropriate funds to purchase voting technology; provide low-interest loans to counties to purchase voting equipment; centralize their voter registration rolls; require all voters to present identification; lengthen voting hours; eliminate punch-card ballots; allow for no-excuse absentee voting; set procedures for counting, certifying and recounting ballots and to establish statewide definitions of votes and overvotes. Legislatures are also considering bills prohibiting or specifying certain ballot designs; establishing pilot projects in Internet voting for military and overseas voters or for the general public; establishing state voting holidays; allowing election day voter registration; adopting the FEC voting systems performance standards and allowing secrecy of the ballot for the visually handicapped, to name several.

The legislature in Florida alone is considering more than 40 different measures related to voting technology, voter education, voter rolls, absentee ballots and counting, recounting and certifying ballots. A bill being considered in Arizona

would allow voters to request an early ballot when they register for or renew a driver's license. A bill proposed by the Speaker of the House in California would appropriate more than \$300 million to upgrade voting systems. Several states are considering bills to restore eligibility of convicted felons; others are considering bills to prevent felons from voting.

Attached to this testimony is a chart depicting the current status of over 1,500 bills being considered in state legislatures. The range of action on the part of state legislatures demonstrates our commitment to a comprehensive review of the nation's election laws and processes. It demonstrates our commitment to making the necessary changes to our state election laws and processes expeditiously, but also deliberately and thoughtfully, to ensure that any legislation we enact is not just any fix, but the right fix to the unique needs of our state.

One conclusion we can draw about election processes in America is that one size does not—and will not—fit all. Mail-in balloting appears to work well in Oregon; it might not be feasible in many other states. Similarly, some states see a need to eliminate their punch card machines while others are more concerned about the rate of overvotes they have experienced on their optical scan equipment or the confusion that some voters experience in using certain kinds of touch-screen

technology. Some states are looking to devote additional resources to training poll workers and developing voter education pamphlets; others are seeking tools to help them maintain their ever-growing list of voters registered through Motor Voter. There is no one solution—just as there is no one problem.

State legislatures are the laboratories of democracy. We are the forum where America's ideas are crafted, debated and enacted. We are extremely concerned about public confidence in the integrity of the voting process and committed to making the reforms necessary to ensure that every citizen can know that, when they participate in the most fundamental act of our democracy, their vote will count. We hope that, rather than crafting a "one-size-fits-all" solution to the problems raised by the media spotlight on last fall's election, you will defer to the state lawmakers who have been engaged in this issue since the first chad was counted in Florida. We hope that you will continue to consult with NCSL and state lawmakers as you work to craft federal legislation to assist us in this effort. In the interim, we pledge our support to you, Mr. Chairman and members of the committee, as you work to fashion federal legislation that supports, rather than complicates, ongoing state efforts in this area.

We thank you for this opportunity to testify and would be happy to answer any questions the committee may have.